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May 29, 2018

Via ECF

The Honorable Freda L. Wolfson, U.S.D.J.
The Honorable Lois H. Goodman, U.S.M.J.
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: *Cottrell et al. v. Alcon Laboratories, Inc., et al.* Civil Action No. 14-5859

Dear Judge Wolfson and Judge Goodman:

On behalf of Plaintiffs in the above-captioned case, I am responding to the letter of May 24 from Liza M. Walsh requesting that discovery be stayed until Defendants' anticipated motion to dismiss is decided.

As I pointed out in my letter of April 16, 2018, ECF No. 131, "the mere filing of a dispositive motion does not constitute 'good cause' for the issuance of a discovery stay." *Gerald Chamales Corp. v. Oki Date Americas, Inc.*, 247 F.R.D. 453, 454 (D.N.J.2007). Once again, Defendants do not argue that their motion is likely to prevail (the Court will recall that they did assert that their petition for certiorari was likely to succeed), but merely that a stay would save them "significant costs associated with discovery while potentially dispositive motions are outstanding." ECF No. 136. But, as I pointed out in my earlier letter, those expenses are not likely to be unduly costly because most of what is needed for class certification here was done in *Eike v. Allergan, Inc.*, 2016 WL 3965183 (S.D. Ill. July 25, 2016), *amended*, 2016 WL 4272127 (S.D. Ill. Aug. 15, 2016), *rev'd on other grounds*, 850 F.3d 315 (7th Cir. 2017). ECF No. 131 at 4.

These cases are nearly four years old, and discovery has not yet begun. Indeed, the first conference with Magistrate Goodman is yet to be held. The facts extend back many years. Inevitably, as time passes, witnesses will become unavailable and memories will dim. Thus, Plaintiffs respectfully request that the Court follow the numerous cases by the judges of this District cited in my earlier letter, ECF No. 131 at 5, and lift the stay.

Respectfully,

s/ Jeffrey w. Herrmann

Jeffrey W. Herrmann

cc: All Counsel of Records (via ECF)